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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICARDO BANUELOS,

Defendant.

2:07-CR-137 JCM (RJJ)

ORDER

Presently before the court is petitioner Ricardo Banuelos' *pro se* motion to reconsider. (Doc. #100). The United States Attorney's Office did not file an opposition.

On December 23, 2011, the court entered an order denying petitioner's motion to vacate sentence pursuant to 28 U.S.C. § 2255. (Doc. #99). The court found that petitioner had to exhaust his administrative remedies before the court could analyze petitioner's claims. Thus, the court dismissed petitioner's § 2255 motion without prejudice. (Doc. #99).

Petitioner now moves the court to reconsider its order denying the § 2255 motion. Petitioner argues that, while the court was reviewing his § 2255 motion, he was simultaneously pursuing his administrative remedies. (Doc. #100). In the prior § 2255 briefing, petitioner did not inform the court that he was pursuing administrative remedies.

Petitioner now asserts that, instead of dismissing his § 2255 motion without prejudice, the court should (1) stay the § 2255 motion until his administrative remedies are resolved and (2) give petitioner an opportunity to amend his § 2255 motion to address the administrative remedy outcome.

1 (Doc. #100).

2 "Reconsideration is appropriate if the district court (1) is presented with newly discovered
3 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an
4 intervening change in controlling law." *School Dist. No. 1J v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th
5 Cir. 1993); *see* FED. R. CIV. P. 59(e); *see also* FED. R. CIV. P. 60(b). In addition, error, mistake,
6 inadvertence, surprise, or excusable neglect on the part of the parties may warrant reconsideration.
7 *See Associates Discount Corp. v. Goldman*, 524 F.2d 1051 (3rd Cir. 1975).

8 Here, petitioner has not presented the court with sufficient grounds to reconsider its prior
9 order. The court denied petitioner's 28 U.S.C. § 2255 motion without prejudice. (Doc. #99). Thus,
10 petitioner can bring a new § 2255 motion, incorporating administrative remedy arguments, once he
11 has exhausted his administrative remedies.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that petitioner Ricardo
14 Banuelos' *pro se* motion to reconsider (doc. #100) be, and the same hereby is, DENIED.

15 DATED March 1, 2012.

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UNITED STATES DISTRICT JUDGE